



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stephen A. Owens
Director

HAZARDOUS AIR POLLUTANTS RULE STAKEHOLDER MEETING SUMMARY

DATE: September 28, 2005
TIME: 9:30 a.m.
LOCATION: ASU Downtown Center, A 225-228
502 E. Monroe Street, Phoenix, Arizona

PUBLIC ATTENDEES

(See attached)

ADEQ STAFF

Nancy Wrona
Diane Arnst
Steve Burr
Ira Domskey
Kevin Force
David Lillie
Eric Massey

ADDITIONAL ATTENDEES

Kelly Cairo, Gunn Communications
Theresa Gunn, Gunn Communications
Gary Lage, Weston Solutions
Steve Mauch, Weston Solutions
Teresa Verstraet, Weston Solutions

AGENDA

- Opening Remarks
- Introductions and Meeting Overview
- Approach to Risk Management Analysis Under the State HAPs Rule
- Stakeholder Discussion
- Additional Stakeholder Comments
- Next Steps
- Adjourn

OPENING REMARKS

Nancy Wrona thanked stakeholders for attending the Hazardous Air Pollutants (HAPs) meetings and noted her appreciation of time spent participating in the process over the summer. Wrona stated that this would be the last regular stakeholder meeting until the group meets to discuss the strawman rule, which will be posted October 12.

INTRODUCTIONS AND MEETING OVERVIEW

Northern Regional Office
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004
(928) 779-0313

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733

Meeting facilitator Theresa Gunn explained that this meeting was being held in addition to the anticipated schedule and at the request of stakeholders to address concerns about the risk management analysis approach. She reviewed the meeting objectives and explained that index cards and other comments sent to the agency would be recorded for consideration by the agency. Gunn reviewed guidelines for holding a good meeting and called for introductions.

APPROACH TO RISK MANAGEMENT ANALYSIS UNDER THE STATE HAPS RULE AND STAKEHOLDER DISCUSSION

Steve Burr provided the presentation, “Strawman Approach to Risk Management Analyses,” which is available on the ADEQ website at www.azdeq.gov/function/laws/draft.html#haps. He briefly reviewed the statute, and noted that the overall RMA approach is similar to that used for determination of source listing. Presentation highlights included:

- It is helpful to review this conceptual process while the agency continues to work on the rule.
- A tiered approach for risk management is used.
- A facility is entitled to use the simplest approach that results in an exemption. However, the simplest methods are also the most conservative.
- The agency intends to develop guidance identifying AACs for as many HAP group members as possible by the time the rule is proposed.
- Tier 1 is available only to HAP group members. It is highly conservative.
- Tier 2 uses SCREEN and a determination of concentrations at the process area boundary.
- Tier 3 uses SCREEN, and for acute exposures, a determination of concentration at the process area boundary. For chronic exposures, an extended boundary may be used if the public is excluded by measures made permanent and enforceable in a deed restriction.
- Tier 4 is similar to Tier 3, except that it uses a refined model in accordance with ADEQ and EPA guidance and allows consideration of additional factors listed in the statute.
- A new permit or significant permit revision will be required for all sources seeking an exemption through the RMA process. This will afford the public and interested parties with the opportunity to comment or appeal.

Stakeholder questions and comments follow. (Items shown in *italics* are recorded verbatim from cards submitted by the stakeholders.)

- Would the “assumption of voluntary limits on PTE” as shown on the last slide require a deed restriction? **Response:** No. **Reply:** A cleanup program has a deed restriction. In a mining area, for example, the process area is small, whereas a large area would need to be fenced. This makes no sense in creating such a deed restriction. **Response:** There would be an opportunity to revise the deed restriction with a facility modification.
- What sort of restriction is acceptable? **Response:** An acceptable restriction is one that would exclude the public from the area. This would be recorded in the chain of title and would be part of the permit approval.
- I am happy to see flexibility on the process area boundary, however, would the agency consider approaches other than a deed restriction? **Response:** The agency believes a deed restriction is necessary to insure the exclusion measures are permanent.
- How would an EJ community afford to challenge or participate in this type of process? **Response:** This is a good comment, and part of ongoing consideration. The agency is

willing to sit down and discuss this issue. **Reply:** This is a civil rights violation. The agency should provide free technical assistance.

- Would a Tier 1 RMA require a permit review? **Response:** Yes.
- Modeling and AACs influence the RMA. The tiers address modeling. Is there a way to look at the AACs? **Response:** Yes, this would occur under Tier 4.
- Is there a hybrid approach? **Response:** No, if an in-depth analysis is necessary, it should occur at the highest level of the tiered approach.
- Why not use a conservative screen model in conjunction with adjusted AACs?
Response: We wanted the first tiers to be very straightforward and simple.
- RMAs under Tier 4 should be allowed to pick and choose.
- HAPRACT shouldn't be more stringent than MACT. These are different sets of technological assumptions. **Response:** In unusual circumstances, it is possible that HAPRACT could be more stringent. MACT is a standard fixed at a particular time. What is considered MACT today may be less stringent than RACT 20 years from now. (Note: There was discussion as to whether a source subject to federal MACT or NESHAP would be included under the state HAPs rule.)
- Can a smaller source end up with a more stringent standard? **Response:** This is a theoretical possibility, but MACT is generally more stringent than RACT. **Reply:** Unless the agency says this cannot happen, I believe it will.
- When there is a modification, will the rule apply to all HAPs? **Response:** No. Upon further review of the statute, the program would apply only to HAPs emitted at levels greater than the de minimis amount.
- If the Weston modeling demonstrates that a source category is below the AACs for HAPs other than those on which listing is based, sources within the category should not be required to perform an RMA for those HAPs. **Response:** We cannot know in advance whether emissions of a HAP from a particular source poses a threat to health in the absence of an RMA.
- Are MACT sources applicable to the program? **Response:** The statute does not say if a source is subject to MACT is out of the program. In addition, as noted above, what is MACT today may not qualify as MACT or even HAPRACT in the future. However, there may be policy reasons for granting an exclusion for facilities subject to MACT standards.
- If there is insufficient data for AACs, why use the most stringent values? **Response:** To insure protection of public health. Uncertainties in the health data could be addressed in a Tier 4 RMA.
- *How handle IRIS changes?* There should be an ability to update the AACs. **Response:** Yes, this would be available under Tier 4. We will also update the AACs as part of the triennial review.
- Can we go back and use the Tier 1 analysis if IRIS changes? **Response:** We will consider the ability to combine approaches.
- Regarding a modification at an existing facility, the risk assessment would be on just the chemicals emitted over the de minimis? **Response:** Yes.
- What is the definition of control technology? Does it include pollution prevention activities or tailpipe? **Response:** All of these would be included.
- Is a change in formulation, but one that doesn't exceed the PTE, considered a modification? **Response:** I believe so. **Reply:** This is utterly impossible and would

shut down industry. This is not a modification, but perhaps should be more of a permit revision. **Response:** This would be dependent on how the permit was written.

Modification includes an increase in emissions. A voluntary PTE limit may also assist regarding this issue. We are also considering a PAL type program. We would like comments on industry operations that should not be part of the program.

- *Must mobile source emissions, such as truck or aircraft exhaust, be included in the potential emissions for RMA?* **Response:** No.
- Did ADEQ include a workload analysis for the agency and other agencies? **Response:** No. The permit processing is billable on an hour-by-hour basis and we are not sure a workload analysis would point out anything at this time. The process will be subject to licensing timeframes like any other permitting process.
- What if the background concentration is higher than the AAC? **Response:** We don't have very good background concentration data. This would be part of a Tier 4 RMA.
- If there is a change in fuel oil suppliers, it is likely a HAP would change. Would this constitute a modification? **Response:** Not necessarily, since there is an existing exemption for fuel.
- Would exceptions for modification include those adopted as part of NSR reform? **Response:** The pollution control project was removed and struck down. It is the agency's intent to treat this like the programs we are accustomed to.
- *P.C.P. exclusion exists in the NSR program and the NSPS program. Will state HAPs program have PCP exclusion?* **Response:** We will consider this.
- Who will review RMAs? **Response:** The permitting group will handle RMAs, with assistance from modeling.
- Does HAPRACT apply only to the part modified? **Response:** Yes.
- What standards are in the permit? **Response:** There are general standards that apply, even if the source obtains a complete exemption from the HAP program without voluntarily assuming controls, which will in any case occur only rarely.
- *Tier 4 should allow sources to seek a revised AAC and then use a conservative SCREEN model to demonstrate impact is below the revised AAC.*
- Why are stakeholders complaining if the risk analysis is acceptable? I don't believe in this approach.
- Whose numbers will be used in RMA? **Response:** Tier 1-3 uses ADEQ numbers. Tier 4 allows for the opportunity to use other data with agency approval.
- How do you determine airshed? Will facilities have to model other sources within the airshed. **Response:** Facilities would not be required to model other sources. An airshed depends on dispersion characteristics.
- This proposal is set up so that a small source does not participate. However, they now must get a permit in order to show an exemption and forever will be considered a permitted source. There should be a way to avoid putting a small source into the permitting process. *Consider alternatives to requiring a permit for RMAs. Wouldn't public notice and comment and a resp. official certification address ADEQ's underlying concerns?*
- I am puzzled as to where this program will address "adverse environmental effects."
- This process proposes extreme difficulties especially for small companies, and especially at Tier 4 review levels. Industry is not a monolith.

- I would like to get the acute and chronic list in Excel so I can use it easily. **Response:** We will post it in this form on the website.

Additional comments received on comment cards included:

- *Wouldn't an enforceable permit condition be as effective as a deed restriction if a source desires an alternative to use of a process area boundary?*
- *Weston has modeled screen sources using AACs and SCREEN modeling to determine which HAPs are above thresholds, this subjecting that source to the program for all HAPs. The RMA analysis will, appropriately, focus on specific HAPs. Why can't a source modeled by Weston point to Weston's modeling to justify exclusion of regulation of all HAPs below thresholds (ala Tier 2). If so, why make source subject to regulation for all HAPs to begin with?*
- *Can HAPRACT be more stringent than MACT? ADEQ seems to say "yes."*
- *ADEQ (should) provide free technical assistance to EJ communities to participate in RMA decisions.*
- *The process area boundary is way inside MSHA boundary for active mine site – no way deed restriction will be recorded on property under MSHA jurisdiction.*
- *How would EJ communities afford to challenge an exemption through RMA?*
- *What is the approval process for deed restrictions?*
- *What does ADEQ envision to be acceptable "deed restrictions approved by ADEQ"?*
- *Clarification to Nancy's comment that MACT sources wouldn't be applicable to HAPRACT.*
- *Why revert to extremely conservative Weston AAC for specific compound for which there is "insufficient" toxicological data under Weston's approach?*

ADDITIONAL STAKEHOLDER COMMENTS

Gunn reviewed cards previously submitted regarding risk assessment and with assistance from stakeholders, created a list of RMA categories including:

- Environmental effects
- Alternative to permit for RMA exclusion yet still have public review
- Another regulation on control of boundary
- Process modification trigger
- Assistance to EJ communities to review RMA
- HAPRACT applicability to MACT source and more stringent question
- Tier 4 flexibility, revised AAC and screen model
- Deed restriction vs. permit restriction (process boundary).

She pointed out that attendees received a packet of HAPs Stakeholder Comments, and invited those with additional e-mailed or written comments to forward them to her at tgunn@gciaz.com. The comments distributed will also be posted on the agency website.

Gunn reviewed other HAPs issues submitted previously and asked stakeholders to assist in condensing these topics further. Items reviewed follow.

“Hotspots” category

Gunn noted that ADEQ is aware of the issue of clustering but cannot address it under this statute. She asked stakeholders if the category could be taken off the list of issues. Comments included:

- This must remain an issue. The statute talks about aggregate effects, and therefore, includes this issue. Anything in statute is subject to Title VI. **Response:** We thought this was addressed. **Reply:** This is not acceptably addressed.

Acute/Chronic Concentration Issues

Gunn read comment cards previously received related to this issue. Stakeholder-identified themes included:

- Basis of the AACs themselves
 - Scientifically sound?
 - Consistent with statute?
- Some issues are answered at Tier 4 of the RMA process
- Use of AACs inside and outside this program.
- What is an appropriate risk level?

Stakeholder comments included:

- Some AACs may not be consistent with the concept of adverse health effects.
- Historically, when ADEQ says data will only be used for a specific program, the data eventually get worked into other programs, either directly or indirectly.
- We can regroup these questions at best, but each card needs to be reviewed. **Response:** This will occur. We are also preparing a response to both of the large stakeholder response documents received and distributed at the meeting. These documents will also be made available on the ADEQ website.

Modeling

Gunn read comment cards previously received related to this issue. Stakeholder-identified themes included:

- The modeling is too conservative
- Health issues
- Base model on actual, not potential emissions
- Statutory issue
- Process area boundary
- Wrongful assumption regarding stack caps

Stakeholder comments included:

- HAPs do not necessarily influence certain health conditions, such as asthma.
- We are working on an alternative to target the actual effect, not potential.
- There is a risk of missing an issue if we reduce the number of cards. **Response:** We will attempt to categorize the comment cards and send to all stakeholders. (Note: stakeholders agreed to this approach.)
- There is an issue of reactivity.
- How will determination of control technology, HAPRACT or MACT, be determined and by whom? **Response:** This will be on a case-by-case basis. **Reply:** Stakeholders need more information as to what this means. **Response:** The process that will apply under the case-by-case basis is at issue here.

- Since modification is the trigger for existing facilities, does ADEQ intend to expand on this definition? **Response:** This will be part of the strawman. We will make use of existing definitions and NSR where possible.
- What information will be used in the model? **Response:** For a specific source modeled, if we have new information we will rerun the model. The document posted showing modeling information should include the data source and assumptions used. If stakeholders find errors, please inform the agency. However, the information is based on data reported from sources to the county and state. **Reply:** The Morenci and Miami information does not reference the source of the modeling data. **Response:** We will put the report used to make this determination on the website.
- Do you want to know the source for emission characteristics or emission rates? **Response:** Probably rates. **Reply:** This may be addressed through TRI data.
- Our data shows less HAPs today than that used in the modeling. The 2004 data is much better than the 2002 data shows.
- I am skeptical of the methodology. Due to fluctuations in business years, this is not an appropriate process. TRI data could be used across the nation. The statute requires a scientific basis. This process isn't scientific.
- I do not see an attempt to address the larger/general public. There are industry representatives here, but not the public. **Response:** The level of discussion at the stakeholder meetings is very technical and not necessarily suited to a public forum. Also, this is an additional stakeholder process, above and beyond that which will occur for the rule. **Reply:** Some members of the public have a technical background, but they are not paid to be here.

NEXT STEPS

The next HAPs Stakeholder meeting will be held October 28, from 9 a.m. – 4 p.m. The purpose of the meeting will be to review the strawman document. This document will be available on October 12 and posted on the ADEQ website at:

<http://www.azdeq.gov/function/laws/draft.html#haps>.

ACTION ITEMS

- Consider offering a combined approach, e.g., using the Tier 1 analysis if IRIS changes.
- ADEQ to consider P.C.P. exclusion (which exists in the NSR and NSPS programs).
- ADEQ to post acute and chronic list in Excel on the agency website.
- ADEQ to post HAPs Stakeholder Comments on the agency website.
- ADEQ to review the basis for listing in IRIS (regarding whether some AACs consistent with the concept of adverse health effects).
- ADEQ to post the report used to in modeling on the website.
- Gunn to collect and distribute information provided on comment cards to stakeholders.

HAZARDOUS AIR POLLUTANTS RULE
***DRAFT* STAKEHOLDER MEETING SUMMARY**
September 14, 2005

PUBLIC ATTENDEES

Alan Abbot, Microchip Tech.
Bert Acken, Lewis & Roca
Eric Albury, Geomatrix Con.
Sean Aldrich, Intel Corporation
Pete Allergy, ACS&B
Darcy Anderson, Kleinfelder
Christopher Andrews, Andrews
Environmental Mgmt.
Sandy Bahr, Sierra Club Grand Canyon
Chapter
Chuck Bischoff, Jordan Bischoff McGuire
& Hiser
Steve Brittle, Don't Waste Arizona, Inc.
Al Brown, ASU Environmental Technical
Management
Dan Casiraro, SRP
Jo Crumbaker, Maricopa County Air
Quality Dept.
Susan Culp, Arizona League of
Conservation Voters
Stan Curry, Gallagher & Kennedy
Scott Dibiase, Pinal Air Quality
Jerry Dumas, Raytheon Missile Systems
Phillip F. Fargotstein, Fennemore Craig PC
Don Gabrielson, Pinal Air Quality
Larry Hawke, Pima County DEQ
Lynne Hubbard, City of Tucson
Environmental Services
Cindy Ika, Mastercraft Cabinets, Inc.
Johanna M. Kuspert, Maricopa County Air
Quality Dept.
Rollie Leeman, Intel
Wayne Leipold, Phelps Dodge Miami
Brett Lindsay, Phoenix Cement Co.
Jeremy A. Lite, Quarles & Brady Streich
Lang LLP
David Mack, Granite Construction Co.
Eran Mahrer, APS/PNW
Alison McGregor, Squire, Sanders
Joe Mikitish, Attorney General's Office

Jim Mikula, APS
Pam Norris, SCA Tissue
Steve Oak, Earth
Krishna Parameswaran, ASARCO LLC
Pat Ryan, Ryan Environmental
Kathleen Sommer, ADOT
Barbara Sprungl, URS
Susie Stevens-Matthews, Stevens & Stevens
Kathleen Stewart, U.S. EPA Region 9
Steve Trussell, Arizona Rock Products
Assoc.
Sunil Varma, SRP
Ted Vic, Intel
Bill Viper, ALAA
Kathleen Whalen, Arizona League of
Conservation Voters
Alan Woodard Kinder Morgan
Jeff Yockey, Tucson Electric Power
Linda Young, Intel
Jenny Zhao, City of Phoenix